Supreme Court, U.S.
FILED

981019 DEC 16 1998

OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

October Term, 1998

GUL JAISINGHANI,

Petitioner,

vs.

CAPITAL CITIES/ABC, INC., THE KANSAS CITY STAR COMPANY, BILL DALTON, DATATIMES CORPORATION, AND PRODIGY SERVICES CORPORATION,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

DAVID T. AZRIN
Counsel of Record
LAW OFFICE OF DAVID T. AZRIN, P.A.
Attorneys for Petitioner
44 West Flagler Street, Suite 2550
Miami, Florida 33130
(305) 577-0309
Fax: 577-0329

72 pp

QUESTIONS PRESENTED

I. When a publisher writes and publishes an article about a businessman with connections in different states and the article is circulated nationally and on the internet, does the law where the publisher is located normally govern a defamation action by the businessman against the publisher?

II. Does a person change their domicile immediately upon a change in their physical residence coupled with the intent to remain there indefinitely at the time of arrival?

LIST OF PARTIES

The names of all parties to the proceedings in the court whose judgment is sought to be reviewed here appear in the caption of the case. There is no parent or subsidiary company of any party to be listed.

TABLE OF CONTENTS

	Page
Question Presented	i
List of Parties	ii
Table of Contents	iii
Table of Citations	vi
Opinions Below	1
Statement of Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	4
Reasons for Granting the Writ.....	13

I. When a publisher writes and publishes an article about a businessman with connections in different states and the article is circulated nationally and on the internet, the law where the publisher is located should govern a defamation action by the

businessman against the publisher 15

II. A person changes their domicile immediately upon a change in their physical residence coupled with the intent to remain there indefinitely at the time of their arrival 26

III. CONCLUSION 32

Appendix 33

Appendix A -- Order Granting Motion for Summary Judgment and Dismissing Case of the United States District Court for the Southern District of Florida dated March 26, 1997 33

Appendix B -- Final Judgment of the United States District Court for the Southern District of Florida dated March 26, 1997 56

Appendix C -- Order Affirming District Court Order of the United States Court of Appeals for the Eleventh Circuit dated June 24, 1998 58

Appendix D -- Order Denying Petition for Rehearing of the United States Court of Appeals for the Eleventh Circuit dated September 18, 1998 .. 60

TABLE OF CITATIONS

Cases Cited: Page

Bishop v. Florida Specialty Paint Co., 389 So.2d 999 (Fla. 1980) 16

Bloomfield v. City of St. Petersburg Beach, 82 So.2d 364 (Fla. 1955) 27, 29, 30

Brewer v. Memphis Pub. Co., 626 F.2d 1238 (5th Cir. 1980), cert. denied, 452 U.S. 962 (1981) . . . 23

Brown v. National Car Rental System, 707 So.2d 394 (Fla. 3d DCA 1998), review denied, 718 So.2d 1234 (Fla. 1998) 16

Chappelle v. Beacon Communications Corp., 863 F.Supp. 179 (S.D.N.Y. 1994).. 29, 30

Crowell v. Clay Hyder Trucking Lines, 700 So.2d 120 (Fla. 2d DCA

1997), review denied, 705 So.2d 569 (Fla. 1998) 16

Davis v. Costa-Gavras, 580 F.Supp. 1082 (S.D. N.Y. 1984) 22, 23, 24, 25

Hardin v. McAvoy, 216 F.2d 399 (5th Cir. 1954) 28

Hopkins v. Lockheed Aircraft Corp., 201 So.2d 743 (Fla. 1967) 16

Huddleston v. Dwyer, 322 U.S. 232 (1944) 13

Jewell v. NYP Holdings, Inc., 1998 WL 68444 (S.D.N.Y. 1998) 23

Judge v. American Motors Corp., 908 F.2d 1565(11th Cir.1990) . 17, 24, 25

Keeton v. Hustler Magazine, 549 A.2d 1187 (N.H. 1988) 21

Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941) 13

Lafarge Corp. v. Travelers Indemnity Co., 118 F.3d 1511 (11th Cir. 1997) . . 14

Leavitt v. Jane L., 518 U.S. 137 (1966) . 13

Ledesma v. Jack Stewart Produce, Inc., 816 F.2d 482 (5th Cir. 1987) . 20, 25

Levin v. McPhee, 917 F.Supp. 230 (S.D.N.Y. 1996), aff'd, 119 F.3d 189 (2d Cir. 1997) 23

Marion Power Shovel Co. v. Hargis, 698 So.2d 1246 (Fla. 3d DCA 1997) 17

Mezroub v. Capella, 702 So.2d 562 (Fla. 2d DCA 1997) 16, 17, 18, 19, 20

Paudler v. Paudler, 185 F.2d 901 (5th Cir. 1950), cert. denied, 341 U.S. 920 (1951) 28

Perez v. Perez, 164 So.2d 561 (Fla. 3d DCA 1964) 27, 28

Reynolds v. Ranta, 362 F.Supp. 333 (W.D. Pa. 1973) 30

Ryder Truck Rental v. Rosenberg, 699 So.2d 713 (Fla. 3d DCA 1997),

review denied, 705 So.2d 570 (Fla. 3d DCA 1998) 16

Shapiro v. Assoc. Intern. Ins., 899 F.2d 1116 (11th Cir. 1990) 13

Soghanalian v. Soghanalian, 693 F.Supp. 1091 (S.D.Fla. 1988) 29

Steele v. General Mills,329 U.S. 433 (1947) 13

United States v. Raddatz, 447 U.S. 667 (1980) 14

Williams v. State of North Carolina, 317 U.S. 287(1942) 29

Statutes:

28 U.S.C. Section 1254(1) 2

28 U.S.C. Section 1332(a) 10

Section 95.10, Florida Statutes (1995) 2

Section 95.11(4)(g), Florida Statutes (1995) 2, 22

Section 340(3), California Code of Civil Procedure 3

Section 516.140, Missouri Revised Statutes 3, 21

Other Authority:

Section 6 of the Restatement (Second) Conflict of Laws 11,15,16,17,18,20,26

Section 142 of the Restatement (Second) Conflict of Laws 18, 19, 26

Section 145 of the Restatement (Second) Conflict of Laws 10, 11, 17

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of Florida, published at 973 F.Supp. 1450 (S.D. Fla. 1997), is reproduced in the Appendix (App. A).

The order of the United States Court of Appeals for the Eleventh Circuit, published at 149 F.3d 1195 (11th Cir. 1998) (Table) is reproduced in the Appendix (App. C).

STATEMENT OF JURISDICTION

On June 24, 1998, the United States Court of Appeals for the Eleventh Circuit issued its order affirming the district court's order of dismissal. On September 18, 1998, the court of appeals entered an order denying a petition for rehearing. On March 26, 1997, the United States District Court for the Southern District of Florida entered its final judgment and order and opinion dismissing the case. The jurisdiction of this Court is invoked

under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SECTION 95.10, FLORIDA STATUTES (1995)

95.10 Causes of action arising out of the state

When the cause of action arose in another state or territory of the United States, or in a foreign country, and its laws forbid the maintenance of the action because of lapse of time, no action shall be maintained in this state.

SECTION 95.11(4)(g), FLORIDA STATUTES (1995)

95.11 Limitations other than for the recovery of real property

Actions other than for recovery of real property shall be commenced as follows:

. . .

(4) Within two years.--

. . .

(g) An action for libel or slander.

SECTION 340(3), CALIF. CODE OF CIVIL PROCEDURE

340. One year

Within one year:

. . .

(3) Libel, slander, assault, battery, false imprisonment, seduction, injury or death from wrongful act or neglect, forged or raised checks, injury to animals by feeder or veterinarian.

SECTION 516.140, MISSOURI REVISED STATUTES

516.140. What actions within two years

Within two years: An action for libel, slander, assault, battery, false imprisonment, criminal conversation, malicious prosecution, or actions brought under section 290.140, RSMo.

STATEMENT OF THE CASE

In the late 1980s, Respondent Kansas City Star Company ("Newspaper") started looking into the idea of doing a story on the Veterans of Foreign Wars, whose main office was located in Kansas City, Missouri. The Newspaper believed that it would be interesting to the readers of the Newspaper to read about the operation of this large national organization that had its headquarters in Kansas City.

The reporter assigned to the story, Respondent Bill Dalton ("Reporter"), was having difficulty finding an interesting angle for the story. In a telephone conversation with a Florida charity regulator, the Reporter learned about Petitioner Gul Jaisinghani ("Mr. Jaisinghani"), a businessman who was raising funds for the Veterans of Foreign Wars in Florida and other states. The Reporter decided to make Mr. Jaisinghani the focus of

his article on the Veterans of Foreign Wars ("the Article").

In researching the Article, the Reporter conducted numerous telephone interviews from the Newspaper's office in Kansas City, Missouri. He interviewed at least 18 people by telephone in Florida, more people than any other state.

Mr. Jaisinghani had been doing fundraising for the Veterans of Foreign Wars since the mid-1980s. From 1986 to 1992, Mr. Jaisinghani did more fundraising in Florida than any other state, raising about $11 million. Mr. Jaisinghani had moved from California to Florida in the mid-1980s after he got in a car accident and divorced his wife. He initially stayed with his sister in Florida. He then rented an apartment, purchased a boat where he lived, and then purchased a condominium in Florida in 1989.

He started fundraising in Florida in 1986. He hired an accountant in Florida. He also hired a Florida attorney to handle all of his fundraising across the country. He opened bank accounts in his name in Florida. He had a telephone number listed under his name in Florida. He had a car that was registered and insured in Florida. He attended temples in Florida. Mr. Jaisinghani was treated as a Florida resident for tax purposes. He did not own any property, cars, or bank accounts in California and he did not have a California telephone number. Mr. Jaisinghani's former landlord, condo property manager, Florida accountant, and Florida attorney all testified by affidavit that they considered Mr. Jaisinghani a Florida resident.

In 1990, Mr. Jaisinghani's former wife filed a lawsuit against him in California attempting to recover certain assets. In

addition, in 1991, Mr. Jaisinghani was charged by the Los Angeles District Attorney's Office with certain environmental waste violations stemming from his prior chemical business in California. As a result of these legal actions, Mr. Jaisinghani was required to travel to California frequently to prepare for hearings and meet with attorneys there.

On Sunday, September 22, 1992, the Newspaper published the front page Article about Mr. Jaisinghani, accusing him of stealing donors' money, running two sets of books, hiding stolen cash in his underwear and socks, siphoning stolen money to BCCI in Hong Kong, suggesting that he had a connection with the on-going BCCI scandal, and engaging in illegal fundraising tactics. The Article featured a half-page unflattering picture of Mr. Jaisinghani with his jacket pocket open.

The statements in the Article were false.

The Reporter distorted and exaggerated facts, relied upon unreliable sources, and ignored red flags which showed that the information he was getting was false.

The Article was written, edited, and published in Kansas City, Missouri. The primary circulation was Missouri and Kansas.

Mr. Jaisinghani first read the Article after purchasing a copy in Florida. He immediately contacted his Florida attorney who also bought a copy in Florida. Prior to publication, Mr. Jaisinghani had instructed his Florida attorney to write a letter to the Reporter notifying him that the information he was apparently relying upon was not reliable. After publication, Mr. Jaisinghani instructed his Florida attorney to write another letter to the Newspaper demanding a retraction. In addition, Mr. Jaisinghani also contacted an attorney in Kansas City, Missouri about

bringing a lawsuit against the Newspaper.

The Article caused damage to Mr. Jaisinghani's reputation across the country. In particular, the Article hurt Mr. Jaisinghani's reputation in Missouri with the national VFW officers, who in turn put pressure on the state chapters for Mr. Jaisinghani to disassociate himself from his fundraising companies. Missouri VFW members also contacted state VFW officers in other states in which Mr. Jaisinghani did business. In addition, a Missouri VFW member posted a summary of the Article on Prodigy's on-line computer service, which was distributed nationwide and caused further damage to Mr. Jaisinghani. The Article hurt his ability to renew his Florida contract and to obtain new fundraising contracts in North Carolina and South Carolina, among others.

Mr. Jaisinghani filed this lawsuit for

defamation in the United States District Court for the Southern District of Florida, based on diversity jurisdiction under 28 U.S.C. § 1332 (a), on September 19, 1994, against the Newspaper, the Reporter, the Newspaper's parent company, Datatimes, a computer on-line service that carried the Newspaper, and Prodigy, a computer service that carried a summary of the Article posted by a Prodigy subscriber residing in Missouri. On March 26, 1997, the district court entered an order granting the Newspaper's motion for summary judgment and dismissing the case based on California's statute of limitations. (App. A).

The district court interpreted Florida's choice of law test to require the court to weigh the four factors listed in section 145(2) of the Restatement (Second) Conflict of Laws, namely: 1) the place where the injury

occurred; 2) the place where the conduct causing the injury occurred; 3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and 4) the place where the relationship, if any, between the parties is centered. (App. A, 4).

The district court did not make any mention of section 6 of the Restatement which provides that the choice of law decision must be made based upon an examination of certain policy interests listed in section 6.

The district court held that three of the factors listed in section 145(2) (place of injury, place of conduct, and place of relationship) did not weigh dispositively in favor of any particular state. The court therefore held that the choice of law test hinged on the third factor. (App. A, 45). The court dismissed the fact that the Article was written and published in Missouri and that the

Newspaper was located there. (App. A, 44). The court therefore held that Mr. Jaisinghani's domicile was the determining factor. The court acknowledged that Mr. Jaisinghani had moved to Florida in the mid 1980s. (App. A, 50). Nevertheless, the court held that it was a temporary move and therefore Mr. Jaisinghani had not changed his domicile. (App. A, 52). The court held that because Mr. Jaisinghani had more contacts in his life with California, California law should apply. (App. A, 53-54). The court therefore dismissed the action because, although it was brought within Florida and Missouri's two-year statutes of limitations, it was not brought within California's one-year statute of limitations. (App. A, 13).

On June 24, 1998, the United States Court of Appeals for the Eleventh Circuit affirmed the district court decision without an

opinion. (App. C). On September 18, 1998, the court of appeals denied a petition for rehearing without opinion. (App. D).

REASONS FOR GRANTING THE WRIT

The district court, sitting in diversity, was required to apply Florida's choice of law principles to attempt to achieve the same results that would have been obtained had the case been heard in the Florida courts. Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 496 (1941); Shapiro v. Assoc. Intern. Ins., 899 F.2d 1116 (11th Cir. 1990). This Court should grant the Petition for Writ of Certiorari because the lower federal court's determination of the state law choice of law determination was simply wrong. Leavitt v. Jane L., 518 U.S. 137 (1996) (granting petition to review lower federal's court's incorrect state law ruling); Steele v. General Mills, 329 U.S. 433 (1947); Huddleston v.

Dwyer, 322 U.S. 232 (1944). The judgment of the lower federal court should be reversed because intervening state court decisions show that the federal court determination was incorrect. Huddleston, 322 U.S. at 235 ("Until such time as the case is no longer sub judice, the duty rests upon federal courts to apply state law under the Rules of Decision statute in accordance with the then controlling decision of the highest state court"). This Court owes no deference to the lower federal court's adjudication of state law. Leavitt, 518 U.S. at 145.

Moreover, the court of appeals was required to review the district court's decision de novo to make an independent determination of the issues. United States v. Raddatz, 447 U.S. 667, 690 (1980); Lafarge Corp. v. Travelers Indemnity Co., 118 F.3d 1511, 1514 (11th Cir. 1997). Instead, the

court of appeals apparently made no independent analysis of the issues, and simply affirmed the district court's order without even writing an opinion.

I. WHEN A PUBLISHER WRITES AND PUBLISHES AN ARTICLE ABOUT A BUSINESSMAN WITH CONNECTIONS IN DIFFERENT STATES AND THE ARTICLE IS CIRCULATED NATIONALLY AND ON THE INTERNET, THE LAW WHERE THE PUBLISHER IS LOCATED SHOULD GOVERN A DEFAMATION ACTION FILED BY THE BUSINESSMAN AGAINST THE PUBLISHER.

Florida law provides that the choice of law determination is based primarily upon which state has an interest in applying the particular rule. The choice of law decision is based on the Restatement's section 6 principles, namely each state's interest in the particular law, the parties' expectations, the need for certainty, predictability, uniformity, ease of determination, and the

needs of the interstate system. Bishop v. Florida Specialty Paint Co., 389 So.2d 999, 1001 & n.1 (Fla. 1980) (adopting "the more flexible, modern approach"); Hopkins v. Lockheed Aircraft Corp., 201 So.2d 743, 747 (Fla. 1967).

Subsequent to the district court's decision, numerous recent decisions by the Florida state appellate courts have emphasized that Florida's choice of law test must examine the section 6 principles. See, e.g., Brown v. National Car Rental System, 707 So.2d 394, 395 (Fla. 3d DCA 1998), review denied, 718 So.2d 1234 (Fla. 1998) (court must apply the section 6 principles to decide the choice of law); Mezroub v. Capella, 702 So.2d 562 (Fla. 2d DCA 1997); Crowell v. Clay Hyder Trucking Lines, 700 So.2d 120 (Fla. 2d DCA 1997), review denied, 705 So.2d 569 (Fla. 1998); Ryder Truck Rental v. Rosenberger, 699 So.2d 713 (Fla. 3d

DCA 1997), review denied, 705 So.2d 570 (Fla. 1998); Marion Power Shovel Co. v. Hargis, 698 So.2d 1246 (Fla. 3d DCA 1997).[1]

In Mezroub, the Florida appeals court explained that: "[t]his is not a simple 'center of gravity' or 'contacts counting' test. Rather, the court must determine which state or states have a true interest in the

---

[1] In Judge v. American Motors Corp., 908 F.2d 1565, 1568-1574 (11th Cir. 1990), the federal appeals court itself acknowledged that, under Florida law, "we must, as mandated by section 145(1), turn to the factors delireated in section 6 to determine which sovereign has tne most significant contact." 908 F.2d at 1569. (citations omitted). "As a general proposition, it is fitting that the state whose policy interest are most deeply affected should have its local law applied." 908 F.2d at 1570 (citations omitted). Moreover, the court emphasized that: "[A] court should never apply the law of a state if the policy considerations which underlie that state's rule will not in any way be advanced by the rule's application." 908 F.2d at 1570 n.5.

application of their law, by examining the various factual contacts in light of the rather malleable principles set forth in section 6." 702 So.2d at 565. In Mezroub, the Florida appellate court held that the choice of law determination should be determined by Restatement section 142. Mezroub, 702 So.2d at 565. Section 142 provides that the forum must apply its own statute of limitations permitting the claim unless: (a) maintenance of the claim would serve no substantial interest of the forum; and (b) the claim would be barred under the statute of limitations of a state having a more significant relationship to the parties and the occurrence.

The district court committed plain error because it did not examine any of the section 6 factors and did not even mention section 6. In addition, the court did not even mention section 142.

It is plain that, applying section 142, the Newspaper cannot satisfy its burden. Maintenance of the claim in Florida will clearly serve Florida's substantial interests. First, maintenance of the claim here will foster Florida's interest in providing a forum for redress for a person who was doing substantial business in the state, as Mr. Jaisinghani did. In addition, Florida has an interest in maintaining the suit because the Article addressed Mr. Jaisinghani's fundraising in Florida, relying primarily upon the charity regulator who first told the Reporter about Mr. Jaisinghani's fundraising. In addition, the Reporter interviewed more people in Florida than any other state and many of the witnesses are located in Florida. Accordingly, under Mezroub, section 142 mandates the application of Florida's statute of limitations.

In addition, it is plain that applying the section 6 factors mandates the application of Missouri law.

Regarding the relevant policy interests of the interested states, a statute of limitations serves to protect two interests: 1) protect the state's residents from being subjected to stale lawsuits; and 2) protect the state's courts from being clogged by stale lawsuits. Mezroub, 702 So.2d at 565 (applying Florida's statute of limitations even though injury and conduct occurred in Georgia because Georgia did not have any interest in applying its statute of limitations, especially because there were no Georgia defendants); Ledesma v. Jack Stewart Produce, Inc., 816 F.2d 482, 484 (9th Cir. 1987) (refused to apply California's statute of limitations to action by California resident based on car accident in Arizona because California had no interest in applying

its statute of limitations to action against non-residents); Keeton v. Hustler Magazine, 549 A.2d 1187 (N.H.1988) (discussing purpose of statute of limitations).

Here, California has no interest in applying its statute of limitations to this lawsuit because there are no California defendants. In addition, because the lawsuit was filed in Florida, the state of California has no interest in protecting its courts from being clogged with stale lawsuits.

At the same time, Missouri does have an interest in applying its statute of limitations to this lawsuit because this is a lawsuit against a Missouri newspaper and reporter. Missouri has made a policy decision that its residents may be subjected to such claims for two years. Mo. Rev. Stat. 516.140. In addition, Florida has a policy interest in providing redress to persons doing

business in its state who are harmed by out-of-state defamatory acts for a period of two years. Fla.Stat. 95.11(4)(g).

With respect to the parties' justified expectations, publishers justifiably expect that the law where their activities are based will govern their conduct.

> "Publishers, authors, and film makers consciously attempt to mold their conduct to legal norms, with the expectation that the legal consequences of their conduct will be predictable. Their justified expectation that their conduct will be judged by the rules of jurisdictions in which they carry on their activities merits protection."

Davis v. Costa-Gavras, 580 F.Supp. 1082, 1092 (S.D. N.Y. 1984). Therefore, in a multi-state libel case, especially where the plaintiff has contacts with different states and suffered damage in different states, "the

state where defendants' significant acts and omissions gave rise to their liability is the most appropriate source of legal norms." 580 F.Supp. at 1093. See also Brewer v. Memphis Pub. Co., 626 F.2d 1238 (5th Cir. 1980), cert. denied, 452 U.S. 962 (1981) (the state where a reporter was based had "an abiding interest in the lawsuit"); Jewell v. NYP Holdings, Inc., 1998 WL 684444 (S.D.N.Y. 1998) (New York law applied to action filed by Georgia resident regarding New York newspaper's false statements regarding his alleged involvement in Olympic bombing in Georgia); Levin v. McPhee, 917 F.Supp. 230 (S.D.N.Y. 1996), aff'd, 119 F.3d 189 (2d Cir. 1997) (New York law applied to action against New York newspaper because it had greatest interest in regulating newspaper's conduct).

Here, the Newspaper reasonably expected that Missouri law would govern its actions

because the Article was conceived, written, edited, and primarily circulated in Missouri.

With respect to the principles of certainty, predictability, and uniformity, and ease of determination, where a plaintiff has contacts in different states, application of the law of the publisher's home state fosters the interests of certainty, predictability, uniformity, and ease of determination. Davis, 580 F.Supp. at 1092 (in multi-sate libel suit where the damage was diffused, applying the law of the publisher's state advanced the interests of certainty, predictability, uniformity and ease of determination). Moreover, the choice of law decision must consider equitable considerations, where the law applied will bar entirely the Plaintiff's ability to obtain redress as here. Judge, 908 F.2d at 1573.

With respect to the needs of the

interstate system, these interests are also advanced by application of Missouri law. The needs of the interstate system involve the need to promote interstate commerce as well as the free flow of information. Judge, 908 F.2d at 1572; Davis, 580 F.Supp. at 1092. Uncertainty regarding the choice of law may have a harmful effect on publisher's attempts to mold their conduct and frame appropriate contractual relationships to protect their interests. Davis, 580 F.Supp. at 1092.

With respect to the policies underlying the field, the policies underlying defamation law - namely to provide aggrieved persons with a forum for redress - are advanced by applying Missouri or Florida's statute of limitations. Ledesma, 816 F.2d at 484.

This Court should review the district court's decision because the district court simply got it wrong. The district court did

not even mention section 6 or 142 of the Restatement as mandated by Florida law. In addition, the district court's decision has wider implications for publishers because there is uncertainty about what law applies to actions regarding publication of articles nationally and on the internet. This uncertainty interferes with the free flow of information.

II. A PERSON CHANGES THEIR DOMICILE IMMEDIATELY UPON A CHANGE IN THEIR PHYSICAL RESIDENCE COUPLED WITH THE INTENT TO REMAIN THERE INDEFINITELY UPON THEIR ARRIVAL.

The lower federal court decision was also wrong because it applied the incorrect test to decide Mr. Jaisinghani's domicile. Florida law clearly provides that a person changes his domicil <u>immediately</u> upon arrival to Florida, provided that the person has a subjective intention at the time of arrival to make it

his new home, even if the person contemplates the possibility of eventually returning, later acquires doubts about remaining in the new home, or later is called upon to leave. Bloomfield v. City of St. Petersburg Beach, 82 So. 2d 364, 368 (Fla. 1955) (Florida became Plaintiff's new legal domicile at the time he moved to Florida even though he went back to Michigan for a year and kept his Michigan driver's license). A change of domicile is accomplished immediately upon moving to another state with the intention to make the new state one's new home. Perez v. Perez, 164 So. 2d 561, 562 (Fla. 3d DCA 1964). The test is based upon the person's intention upon arrival in the state. "It is not important if there is within contemplation a vague possibility of eventually going elsewhere, or even of returning whence once came." Perez, 164 So.2d at 563, quoting Hardin v. McAvoy,

216 F.2d 399, 402 (5th Cir. 1954). The fact that the plaintiff may later have acquired doubts about remaining in his new home or may have been called upon to leave it is not relevant, so long as the subsequent doubt or the circumstance of leaving does not indicate that the intention to make the place the plaintiff's home never existed. Hardin, 216 F.2d at 402. See also Paudler v. Paudler, 185 F.2d 901, 903 (5th Cir. 1950) (applying same test), cert. denied, 341 U.S. 920 (1951). When physical presence is coupled with the intention of making it his present home, "the change in domicile is instantaneous." Hardin, 216 F.2d at 402 (plaintiff acquired a new domicile in Florida, even though he had testified that he intended to return to Georgia as soon as he made enough money in Florida). This Court has explained:

"the fact that a stay in a state is not for

long is not necessarily fatal to the existence of a domicile. . . . The essential fact that raises a change of abode to a change of domicile is the absence of any intention to live elsewhere."

Williams v. State of North Carolina, 317 U.S. 287, 299 n.9 (1942). See also Bloomfield, 82 So. 2d at 369 (the fact that party returned to previous state for a full year did not destroy new residency in Florida); Chappelle v. Beacon Communications Corp., 863 F.Supp. 179, 182 (S.D.N.Y. 1994) (New York domicile not destroyed by the fact that party resided in California several months a year); Soghanalian v. Soghanalian, 693 F.Supp. 1091, 1093 (S.D. Fla. 1988) (considered New York resident even though only spent 25 days a years in New York).[2]

---

[2] The fact that Mr. Jaisinghani maintained his California driver's license does not change the

Here, the lower federal court got it wrong when it required that the plaintiff must prove that his physical move was permanent and not "temporary." (App. A, 52). The lower federal court held that the fact that Mr. Jaisinghani contemplated the possibility of returning to California and was later called

---

analysis. The courts have frequently held that a person changed their domicile even though they kept their old driver's license. See, e.g., Chappelle, 863 F.Supp. at 182 (considered New York resident even tnough he still had a California driver's license); Reynolds, 362 F.Supp. at 334 (considered Pennsylvania domiciliary even though still had Ohio driver's license); Bloomfield, 82 So. 2d at 368 (considered Florida resident even though he still had a Michigan driver's license). There are often reasons for not changing a person's driver's license such as the inconvenience or the fact that the license has not yet expired. Reynolds v. Ranta, 362 F.Supp. 333, 334 (W.D. Pa. 1973).

upon to return to attend to certain legal proceedings in California meant that he never in fact changed his domicile to Florida. The court applied the incorrect legal test. The correct test is whether when Mr. Jaisinghani physically moved to Florida in the mid 1980s, he intended to remain indefinitely. The fact that he may have had the vague contemplation of returning or that he was later required to return for certain legal proceedings is not relevant to the determination.

In addition, this Court should address this issue because it has wider applications for persons across the country who change their residency with the intent to make it their new home. Many states such as Florida encourage people to move to their state. The determination of a person's domicile is important for various reasons, including tax residency. The lower federal court's

incorrect determination casts doubt on the legal residency of many people who have moved from state to state for the purpose of establishing a new domicile. Granting this petition will give the Court the opportunity to correct this error of law and provide guidance on this important issue.

III.

CONCLUSION

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

DAVID T. AZRIN
LAW OFFICE OF DAVID T. AZRIN, P.A.
Courthouse Tower
44 West Flagler Street
Suite 2550
Miami, Florida 33130
(305) 577-0309
Fax: 577-0329
ATTORNEYS FOR PETITIONER

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 94-1927-CIV-NESBITT

GUL JAISINGHANI,

Plaintiff,

vs.

CAPITAL CITIES/ABC, INC., et al.,

Defendants.
_____/

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND DISMISSING CASE

This cause comes before the Court upon Defendants Capital Cities/ABC, Inc., The Kansas City Star Company, Bill Dalton, and DataTimes Corp.'s ("the Capital Cities Defendants") Motion for Summary Judgment, filed November 28, 1995 (DE #125) and Defendant Prodigy Services Corp.'s Motion for Summary Judgment, filed November 28, 1995 (DE #129). While each Motion for Summary Judgment

alleges many grounds for relief[1], the Court will limit itself to a discussion of the threshold issue of the statute of limitations for purposes of this Order.

There is no dispute that the suit was brought one years and three hundred and sixty four days after the limitations period had begun to run. Defendants argue that California's one-year statute of limitations

---

[1] These grounds are: (1) That California's one-year statute of limitations bars the action against all defendants; (2) the statements sued upon are constitutionally privileged; (3) Plaintiff cannot show substantial falsity; (4) the statements sued upon are protected by qualified judicial and public records privileges; (5) Plaintiff cannot show that Capital Cities/ABC published the statements sued upon; and (6) Plaintiff failed to provide DataTimes and Prodigy with presuit notice required by Florida law and cannot show that DataTimes and Prodigy published the statements sued upon.

applies, barring all of Plaintiff's claims and necessitating dismissal of the entire case. See Cal.Code.Civ.Proc. § 340(3). Plaintiff disagrees, contending that Florida's two-year statute of limitations applies, allowing his claims to proceed. See Fl. Stat. § 95.11(4)(g). The Court heard oral argument on this issue on January 13, 1997 at which time the parties agreed that the question of whether the statute of limitations had run is a threshold issue of law for the Court to decide prior to trial.

I. FACTUAL BACKGROUND

On September 20, 1992, Defendant Kansas City Star Company, a newspaper publisher, published a news report entitled "VFW donations: Who benefits? Fund-raiser takes 90% of the money given for veterans." The report included seven separate articles that examined the many charitable activities of the

Veterans of Foreign Wars ("VFW"). The lead article focused on Plaintiff, Gul Jaisinghani, a private fundraiser who raised $27 million for VFW state departments in five years in eleven states from Florida to California. The main thesis of the article was that Plaintiff's organization kept 90% of all contributions for its expenses and profits.

Plaintiff, who is a citizen of India with residences in both Florida and California, filed his Complaint alleging diversity jurisdiction on September 19, 1994. The Complaint includes a single count for defamation against all defendants. Plaintiff alleges that the article contains several false statements. As Defendants he has named Bill Dalton, the article's author, the Kansas City Star Company and its parent corporation Capital Cities/ABC, DataTimes, an on-line computer services that carries the Kansas City

Star, and Prodigy, another on-line computer service on which a summarized version of the article repeating the allegedly false statements to other subscribers was posted.

II. DISCUSSION

In Florida, defamation suits must be brought within two years of the publication of the defamatory statements. Fl. Stat. § 95.11(4)(g). Florida, however, has a borrowing statute, which provides that "[w]hen the cause of action arose in another state or territory of the United States, or in a foreign country, and its laws forbid the maintenance of the action because of lapse of time, no action shall be maintained in this state." Fl. Stat. § 95.10. The purpose of the borrowing statute is to prevent forum shopping. Madera v. Hall, 717 F.Supp. 812, 815 (S.D. Fla. 1989), vacated on different grounds, 916 F.2d 1510 (11th Cir. 1990);

Celotex Corp. v. Meehan, 523 So.2d 141, 143 (Fla. 1988). So, if the cause of action arose in another state whose statute of limitations would bar the claims, Florida courts will "borrow" the other state's statute of limitations, barring the action. Celotex Corp., 523 So.2d at 143. Thus, the first inquiry of a district court is to determine where the cause of action arose according to Florida law. Madera, 717 S.Supp. at 815.

Florida has adopted the "significant relationship" test to determine where the cause of action arose. Celotex Corp., 523 So.2d at 144; Bates v. Cook, Inc., 509 So.2d 1112, 1115 (Fla. 1987). Under this test, the cause of action arises in the state with the most significant relationship to the parties and the tortious act or occurrence. To determine which state has the most significant relationship to the case, Florida follows the

approach outlined in the Restatement (second) of Conflicts of Laws § 145(2) and weighs the following factors: (1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (4) the place where the relationship, if any, between the parties is centered. Celotex, 523 So.2d at 144.

Plaintiff and Defendants contend that this issue is one of pure law solely to be determined by the Court. Digioia v. H. Koch & Sons, 944 F.2d 809, 811 (11th Cir. 1991); Shapiro v. Associated Int'l Ins. Co., 899 F.2d 1116, 1118 (11th Cir. 1990); and American Family Life Assurance Co. v. U.S. Fire Co., 885 F.2d 826, 830 (11th Cir. 1989). Thus, this Court will determine in which direction the significant relationship factors weigh,

based on the facts presented to the Court, and determine whether Florida or California bears the most significant relationship to this case.

The first factor, location of the injury, is indecisive; that is, the injury occurred in both California and Florida as well as other states in which the article was published. Normally, in libel cases such as this, the location of the injury is held to occur wherever the periodical is circulated. Stepanian v. Addis, 782 F.2d 902, 903 (11th Cir. 1986)[2]; Madera v. Hall, 717 F.Supp. 812,

---

[2] Stepanian was decided *before* Celotex Corp. v. Meehan, 523 So.2d 141, 143 (Fla. 1988) and thus did not utilize the significant relationship test. The Court's analysis was brief and appeared to rely primarily on where the allegedly libelous statements were published to determine whether Florida's borrowing statute applied. It is therefore

815 (S.D. Fla. 1989); vacated on different grounds, 916 F.2d 1510 (11th Cir. 1990). Here, the offending newspaper was circulated in both California and Florida, as well as other states not relevant. Thus, the injury could be held to have occurred in both states.

Plaintiff attempts to argue, citing cases such as Madera, that the place where the most damage has been alleged to occur is the place where the most injury was done to Plaintiff's reputation and should bear the most significant relationship to the cause of action. In this case, that proposition is not entirely clear. While Plaintiff alleges and provides extensive evidence that their ability to acquire fundraising contracts in Florida

---

appropriate to rely on this case for the proposition that the injury in a libel case occurs where the publication is circulated, but not to determine how to apply the borrowing statute.

has been damaged. Plaintiff does not show how this damage is unique to Florida. Plaintiff's business is a national business with offices and contracts throughout the United States. Plaintiff was actively lobbying for contracts in many states and each one of these contracts had the potential to be damaged by the allegations in this article. Additionally, Plaintiff has not shown that these business opportunities were pending at the time of the publication of the article. Even though Plaintiff had no active contracts in California as well, he still maintained a base of operations there, keeping his main accountant and lawyer in California. Thus, based on the evidence in the record and at oral argument, it can not be said that the injury occurred more significantly in either Florida or California.

The second factor, the location of the

conduct giving rise to the injury, is likewise not dispositive. The "Kansas City Star" is published in Missouri, which weighs in favor of neither California nor Florida. Plaintiff contends, in the alternative, that the case bears the most significant relationship with Missouri, which, like Florida, has a two-year statute of limitations and that Missouri's statute of limitations should apply. The only connection Missouri has with this case, however, is that it is the location of publication, which is not sufficient, standing alone, to render it the state with the most significant relationship. Additionally, the article was republished throughout the country making Missouri's relationship less significant. Thus, the second factor of the test provides no help in weighing between California and Florida.

The fourth factor, the place where the

relationship between the parties is centered, weighs in favor of California, but not so significantly that it, alone, would cause California to have the most significant relationship. While researching the article, the author, Bill Dalton, tried to contact Plaintiff in both Florida and California. He was finally successful but only marginally so, in California, when he attempted to question Plaintiff in a courthouse. Plaintiff responded by essentially stating that he had no comment. Plaintiff did, however, direct his attorney to respond to Defendant's questioning from Florida, but this was not a significant amount of the research done on the article. The article was primarily about his businesses and actions in California and most of the research was done there. This is the extent of the parties' "relationship."

Thus, the statute of limitations issue

hinges on the third factor of the test, and since the Kansas City Star Company and Bill Dalton are located in Missouri, the dispositive issue is Plaintiff's domicile, residence, and place of business. Unfortunately, these are the most difficult questions to answer. Plaintiff has conducted fundraising activities in several states, including both California and Florida, and maintains residences in both Florida and California, so he has relationships with both states. The issue before this Court is which of those relationships bears the most significance to this case.

Domicile is established by physical presence in a place and an intent to remain there indefinitely. Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 37 (1989). The concept of "domicile" must be distinguished from that of "residence;" a

person can have only one domicile, but may have many residences. Id. Once established, a person's domicile continues in that same place until he establishes a new domicile. Id.; see also, Wright & Miller § 3612 at 535-36. To establish a new domicile, one must be physically present in the new place and possess the intent to remain there indefinitely. Scoggins v. Pollock, 727 F.2d 1025, 1026 (11th Cir. 1984). In general, the law favors one's established domicile over a putative new domicile unless one is clearly shown to have changed domicile, and one's domicile is presumed to be the same as one's residence. Wright & Miller § 3612 at 534-35. The factors considered in determining domicile are numerous and include home ownership, driver's license, voting registration, location of family, location of business and where taxes are paid. Id. at 532-35. The

individual's own declarations are usually accorded little weight when in conflict with the facts or when the question is close. Hendry v. Masonite Corp., 455 F.2d 955, 956 (5th Cir.), cert. denied, 409 U.S. 1023 (1972); Wright & Miller § 3612 at 532.

Plaintiff was born in India and moved to this country in 1959. He moved to California in the 1960's where he attended the University of Southern California, started a family, and began the first of several California-based businesses. In the early 1980's, while still based in California, Plaintiff began his VFW fund-raising activities, which are the subject of the allegedly libelous article. His fund-raising business began in California, expanded next to Texas, then to Florida. From Florida, Plaintiff expanded the business to Louisiana, Colorado, Georgia, Indiana, Illinois, Michigan, Oklahoma, and Nevada.

In the mid 1980s, Plaintiff began to experience legal problems in California, both civil and criminal, which stemmed from his various businesses, including his fund-raising business. In 1986 he and his wife divorced. His wife got the California house, and he rented an apartment in North Miami, Florida, where his sister lived and where he was at the time conducting vigorous fund-raising activities. He later moved to a boat owned by his daughter, which was docked in Bayside, Miami. During this time, his business center remained in California, even though he was no longer soliciting funds for the fund-raising business in California. For instance, his principal accountant, Chabil Vasani, is located in California, as are the majority of his attorneys. More importantly, he maintained, and maintains to this day, a California driver's license and never obtained

a Florida license. In addition, his girlfriend, Sylvia Arvayo, who served as an officer and owner of several of his fund-raising companies, resides in California.

In 1980, Plaintiff purchased a condominium in North Miami Beach in his daughter's name that was later transferred to Plaintiff in his own name. He owns a car in Florida, but it is not registered to him and could not be as he does not have a Florida driver's license. The following year, Plaintiff returned to California to deal with his various legal problems and took up residence with his girlfriend in Long Beach. Plaintiff has testified in a deposition that since early 1991 he has spent 70%-80% of his time in California. Also, Plaintiff admitted that he has been physically present in California for more time than any other state. His utilities bills since 1991 indicate that

he has used very little power in the North Miami Beach condominium and has made few phone calls from the unit.

Thus, Plaintiff has never established a domicile in Florida, despite the move there in the mid 1980's. He was clearly domiciled in California since the 1960's. To establish a domicile in Florida, Plaintiff would have to establish not only physical presence there but he also would need the intent to remain there indefinitely. The burden is on Plaintiff to demonstrate that he changed his domicile to Florida; the presumption is that it remained in California. See Wright & Miller § 3612 534-35. Although he clearly had some important contacts with Florida, the rented apartment, boat, and later condominium, there is really no evidence that his business center ever moved from California.

The fact that Plaintiff established a

fund-raising business in Florida does not support a change in place of business to Florida, because the very nature of his business requires him to establish businesses in many states. Nor is there any evidence of an intent to remain in Florida indefinitely. Indeed, the evidence indicates that Plaintiff intended to return (or remain) in California. He still maintains a California driver's license and never attempted to obtain one in Florida, his principal accountant remained in California, he has lived in California most of his life, and his girlfriend lives in California. Moreover, he only moved to Florida, where his sister lives, when he lost his house to his wife. This was merely a temporary move.

Most important, however, is Plaintiff's own admissions in the form of sworn statements claiming his residence and domicile as

California. Since January 1992, Plaintiff has identified his girlfriend's address in California as his place of residence in seven sworn statements. He gave one of these statements in a lawsuit in California, one in a lawsuit in Michigan, and the remaining five to various officials in Florida. These were not self serving statements made at the time for convenience, but statements purporting Plaintiff's belief as to the state with which he has the most contacts. The article in question in this case was published on September 20, 1992, nine months after the first of these sworn statements. Thus, at the very least, Plaintiff was residing in California at the time of publication.

The significant relationship analysis, as well as that for domicile, residence, and place of business, require the Court to weigh the totality of the circumstances of the case.

Celotex Corp., 523 So.2d at 143. In doing so, the Court finds that Plaintiff is a California citizen who took up residence in Florida for a brief period while he was going through his divorce and legal troubles back in California. Plaintiff spent the better part of his life in California, developed several businesses there, was married, raised a family and divorced there, started and maintained a fund-raising business there, lived with his girlfriend there, and finally, was indicted and tried there. Clearly, Plaintiff himself has a more significant relationship with California than with any other state. Moreover, the article in question focused on Plaintiff's fundraising and other activities in California. It thus seems fitting that the California statute of limitations should apply to his libel action, especially as he filed the action one day prior to the expiration of

Florida's statute of limitations and 364 days after the expiration of California's. Plaintiff appears to be engaged in the very thing that Florida's borrowing statute was designed to prevent: forum shopping. California has the most significant relationship to this case and California's one year statute of limitations will bar this case from proceeding. Accordingly, it is hereby

ORDERED AND ADJUDGED that:

1. Capital Cities Defendants' Motion for Summary Judgment filed November 28, 1995 is **GRANTED**.

2. Prodigy Services' Motion for Summary Judgment filed November 28, 1995 is **GRANTED**.

3. All other motions not previously ruled upon are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers, Miami, Florida, this 27th day of March, 1997.

LENORE C. NESBITT
UNITED STATES DISTRICT JUDGE

cc:

David T. Azrin, Esq.
Thomas Constantine, Esq.
Thomas R. Julin, Esq.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 94-1927-CIV-NESBITT

GUL JAISINGHANI,

Plaintiff,

vs. **FINAL JUDGMENT**

CAPITAL CITIES/ABC, INC., et al.,

Defendants.
_____/

For the reasons stated in the Order Granting Summary Judgment entered on March 21, 1997, it is thereupon

ORDERED AND ADJUDGED that the judgment be entered in favor of Defendant Capital Cities/ABC, Inc., et al. and against Plaintiff Gul Jaisinghani. Plaintiff shall take nothing from this action and Defendant shall go hence without day.

DONE AND ORDERED in Chambers at Miami, Florida, this 24th day of March, 1997.

_____
LENORE C. NESBITT
UNITED STATES DISTRICT JUDGE

cc:

Counsel of Record

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 97-4683

D.C. Docket No. 94-1927-CV-LCN

GUL JAISINGHANI.

Plaintiff-Appellant,

versus

CAPITAL CITIES/ABC, INC., a Delaware corporation, THE KANSAS CITY STAR COMPANY, a Missouri corporation, BILL DALTON, individually, DATATIMES CORPORATION, an Oklahoma corporation, PRODIGY SERVICES CORPORATION, a Delaware corporation, et al.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Florida

(June 24, 1998)

Before TJOFLAT and DUBINA, Circuit Judges, and SMITH*, Senior Court Judge

---

*Honorable Edward S. Smith, Senior U.S. Circuit Judge for the Federal Circuit, sitting by designation

PER CURIAM:

AFFIRMED. See 11th Cir. R. 36-1.[1]

---

[1] 11th Cir. R. 36-1 provides:

When the court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erogenous;

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;

(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

(e) judgment has been entered without a reversible error of law;

and an option would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 97-4683

D.C. Docket No. 94-1927-CV-LCN

GUL JAISINGHANI.

Plaintiff-Appellant,

versus

CAPITAL CITIES/ABC, INC., a Delaware corporation, THE KANSAS CITY STAR COMPANY, Etc., Et Al.,

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Florida

---

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC (Opinion _____, 11th Cir., 19___, _____ F.2d _____).

Before: TJOFLAT and DUBINA, Circuit Judges, and SMITH*, Senior Circuit Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of

this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Bank are DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

*Honorable Edward S. Smith, Senior U.S. Circuit Judge for the Federal Circuit, sitting by designation.